IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 384 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHHAGANJI SENDHAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 384 of 2001

MR DM THAKKAR FOR M/S THAKKAR ASSOC. for Petitioner

MR KT DAVE APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 21/09/2001

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution, petitioner has challenged the order dated November 2, 2000, Annexure B to the petition, passed by the externing authority, i.e., Sub-Divisional Magistrate, Himmatnagar, by which he has exeterned the petitioner for

a period of two years from five districts, that is, Sabarkantha, Gandhinagar, Mehsana, Ahmedabad City and Ahmedabad Rural and also the order dated February 16, 2001, Annexure C to the petition, passed by the appellate authority confirming the order of externment passed by the externing authority and prayed to issued appropriate writ, order or direction quashing and setting aside both the impugned orders.

2. A show cause notice under section 59 of the Bombay Police Act ('the Act') dated June, 30, 2000 was issued to the petitioner wherein four allegations were made against him to the effect that he is indulging in the activity of selling illicit liquor and if anybody opposes the said activity, giving threat to kill him. Besides this, in all nine cases were registered against him in Himmatnagar Police Station for the offences punishable under the Prohibition Act as well as Indian Penal Code and Chapter Case. It is also observed in the said notice that witnesses are not coming forward to depose against the petitioner as they are afraid of giving statement against him. Therefore by issuing the show cause notice the petitioner was asked to show cause as to why he should not be externed for a period of two years from the above mentioned five districts.

3. The petitioner gave reply to the said show cause notice. The externing authority after considering the reply submitted by the petitioner and the material on record, passed the impugned order of externment externing the petitioner for a period of two years from the aforesaid five districts under Section 56 (a) of the Act.

4. Aggrieved by the aforesaid order passed by the externing authority, the petitioner preferred appeal before the appellate authority and the appellate authority by order dated February 16, 2001 dismissed the appeal and thereby confirmed the order passed by the externing authority which has given rise to the present petition.

5. Mr. D.M. Thakkar, learned advocate for the petitioner, has raised several contentions and tried to convince that the impugned order of externment suffers from the vices of clear non-application of mind. To bring home the aforesaid contention, he drew the attention of this court to the notice served upon the petitioner wherein allegations are made against him about the registration of nine cases in Himmatnagar Police Station against him. Out of these nine cases, seven cases are for the commission of the offences under the

Prohibition Act whereas one case is for the commission of offence under IPC and last case is registered under Section 108 of the Code of Criminal Procedure which is a Chapter Case. The externing authority while recording the impugned order has stated that there are nine cases registered against the petitioner for the commission of the offences under the Prohibition Act which shows clear non-application of mind on the part of the externing authority in passing the order of externment. Therefore, Mr. Thakkar contended that the impugned order of externment suffers from non-application of mind and is liable to be quashed.

6. Mr. K.T. Dave, learned APP who appears for the respondents contested the petition by making oral submissions. He, however does not dispute the factual aspects of the matter and the reasons assigned by the externing authority wherein it is stated that there are nine cases registered against the petitioner for the commission of offences under the Prohibition Act and therefore the activities of the petitioner are detrimental to the maintenance of public order though in fact only seven cases are registered under the Prohibition Act against the petitioner. He therefore urged to pass appropriate orders.

7. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the orders passed by the externing authority as well as the appellate authority and also other papers annexed to the petition.

8. On having perusal of the show cause notice dated June 30, 2000, there are four allegations made against the petitioner which are mainly related to the activities of the petitioner of his dealing in illicit liquor. In the show cause notice, mention is made about registration of nine offences against the petitioner. Out of these nine cases, seven cases are registered for the commission of offences under the Prohibition Act.

9. On having perusal of the impugned order dated November 2, 2000, the externing authority has given a chart of nine cases. In the said chart it is also mentioned as to for commission of what offences the FIRs are registered against him. However, while assigning the reason for externing the petitioner, the externing authority has stated in its order that nine cases are registered against the petitioner for commission of the offences under the Prohibition Act though in fact only seven cases are registered against him for the commission

of offences under the Prohibition Act. This itself shows non-application of mind on the part of the externing authority while passing the externment order.

10. Similar question arose before a Division Bench of this Court in the case of Kalubhai Rambhai Kotadia v. State of Gujarat and others, in Special Criminal Application No. 196 of 1979 decided on February 1, 1980. In the said case, the externing authority, after having recited 26 grounds in the impugned order, stated that the petitioner is a strong-headed and antisocial individual and that he was engaged in committing offences punishable under Chapter XII, XVI or XVII of the "Bombay Police Act". Chapters XVI and XVII referred to in Section 56 of the Bombay Police Act, 1951, are those of Indian Penal Code and not of Bombay Police Act. In fact Bombay Police Act, 1951, does not have Chapters XVI and XVII. It is clear, therefore, that when the externing authority wrote the impugned order, he did not apply his mind to what he was doing and wrote out the order absentmindedly.

11. Coming to the facts of the present case, at the risk of repetition, be it stated that the externing authority has considered all nine cases as if they are cases registered for the commission of offences under the Prohibition Act though in fact out of nine cases, only seven cases are registered for the offences under the Prohibition Act as one case is registered for the offence under the IPC and the last case is relating to Chapter Case. Therefore, the impugned order passed by the externing authority suffers from non-application of mind. On this ground alone, the order of externment externing the petitioner for a period of two years from five districts and the order passed by the appellate authority confirming the order passed by the externing authority, both are rendered invalid and illegal and require to be quashed.

12. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of externment dated November 2, 2000 passed by the externing authority and the order dated February 16, 2001 passed by the appellate authority both are quashed and set aside. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)